Supreme Court, U.S.
FILED

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No._____

IN THE

Supreme Court of the United States

Billie M. Massey *Petitioner(s)*

v.

Bank of Edmonson County and Directors; Dion W. Houchins; Monica Wheatley, U.S. Attorney; Michael F. Spalding, Assistant U.S. Attorney; Sue Austin; Jeffery Hall; Jacky Ott; Donald Dunn; Anthony Hollinsworth; Charles English; Keith Cardwell; Martha McCrady; Billy Hudson; Tim Aulbach; Harold Goff, II; United States of America *Respondent(s)*

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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39 pp

Questions Presented For Review

1. The decision by the Court to substitute the United States as a party on the tort claims and the scope certification without the plaintiff having the right to contest the certification and the subject matter of jurisdiction.
2. The decision by the Court to dismiss a pro se complaint under Federal Rules of Civil Procedure, Rule 12 (b)(6), without the plaintiff having an opportunity to prove his set of facts.
3. The decision by the Court on jurisdiction of State law and appeal of bankruptcy proceedings.
4. The decision of the District Court to strike Plaintiffs' surreply.

List of Parties

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the Court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

Jurisdiction

The date on which the United States Court of Appeals decided my case was October 31, 2002.

A timely petition for rehearing was denied by the United States Court of Appeals on April 9, 2003, and a copy of the order denying rehearing appears at Appendix C.

Constitutional and Statutory Provisions Involved

Appendix A ..... All Pages

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Statement of the Case

On August 28, 2001, Billie M. and Georgie C. Massey, husband and wife, filed a complaint in United States District Court, Western District of Kentucky at Bowling Green, Case No. 1:01 CV-148-M. This said complaint filing was the conclusion of bankruptcy proceedings, Case No. 98-10201(i)(7), beginning February 13, 1998, ending November 22, 2000, Case No. 99-10942(3)(12). The bankruptcy judge held the Masseys in bankruptcy for a period of one year and 27 days after terminating the automatic stay on October 25, 1999. The Masseys' case was dismissed on November 22, 2000. Under case law 839 F. 2d 1517, the bankruptcy court surrenders its jurisdiction except for Distribution of the debtor's estate, which the Trustee failed to do, since this was a state sale and the Masseys were still in bankruptcy, *see Fidelity Standard Mortgage Corp., f/k/a S.B.I. Investors Corp., and First Fidelity Financial Services, Inc., Debtors; Rebecca Darwin a/k/a/ R.R. Darwin, Plaintiff-Appellant v. Jeffrey H. Beck, Successor Trustee to A.W. Beck, Defendant-Appellee*, No. 87-5007, United States Court of Appeals, Eleventh Circuit, 839 F.2d 1517 (1988). This is a unique case. The Masseys' property was sold in a State Court ordered sale while the Masseys were property of the bankruptcy estate, as the bankruptcy court and the Masseys' Trustee had jurisdiction over this said estate, therefore this was a violation of Title 11, Section 525 as this sale was discrimination against the Masseys, *see Bobby Newton Bradley, Appellant v. Philip W. Barnes, Individually and in his capacity as Commissioner of Insurance of the State of Texas, Appellee*, No. 92-2363, United States Court of Appeals, Fifth Circuit, 989 F.2d 802 (1993). After termination of the automatic stay, the Masseys should

have been dismissed so they could take other action.

There was a State Court-ordered sale of the Masseys' farm property on March 25, 2000. The Masseys only owed three creditors, yet the Master Commissioner's file did not contain a Statement of Debt from these three creditors: Farm Service Agency, Bank of Edmonson County and Martha McCrady. Also, the sale notice did not contain the debt owed to these said creditors. This constitutes numerous violations of law by these creditors, the Master Commissioner and the State Court. Also, the Masseys received no money from the sale, as the Master Commissioner's file presented a zero balance.

As a result, the Masseys were penniless, also they did not receive their Homestead monies that they were owed, KRS 427.060. There are approximately 570 violations of Bankruptcy, Federal and State Laws by seventeen defendants. This complaint lists the defendants as the United States Department of Agriculture (Farm Service Agency) and the respondents named in this petition. This said complaint, as a matter of law, KRS 378.030, created a lien in equity by which the Masseys exercised in the County Clerk's office. Also, the Masseys were unlawfully incarcerated by the State Court on February 27, 2002 for refusing to move from their property due to the question of the Homestead monies the Masseys were due, as stated by the Bankruptcy Court. The Masseys received an Opinion and Order from the District Court granting motions by the defendants to dismiss the case (Appendix B), without the pro se litigant having an opportunity to prove their set of facts in support of their claim. *Haines v. Kerner, et al.*, No. 70-5025, Supreme Court of the United States, 404 U.S. 519 (1972). Also, *Conley, et al., v. Gibson, et al.*, No. 7, Supreme Court of the United States, 355 U.S. 41 (1957). Also, *Alfred Samuel Zynn, Jr.*,

Appellant v. Sgt. Charles O'Donnell, No. 82-1225, United States Court of Appeals for the Third District, 688 F. 2d 940 (1982). The Masseys appealed to the United States Court of Appeals for the Sixth Circuit, Case No. 02-5358. The Circuit Court affirmed the District Court's Judgment dated October 31, 2002 (Appendix A). The Masseys filed an en banc petition on time, Case No. 02-5358 and were denied (Appendix C).

Statement of the Case Relating to Question No. 1 of the Questions Presented for Review

On February 27, 2002, the United States District Court, Western District of Kentucky, Bowling Green Division, dismissed the petitioner's pro se complaint filed in said court pursuant to Fed. R. Civ. P. 12 (b) (6) on a motion by the defendants of said complaint, see Opinion and Order (Appendix B). These decisions by the District Court were erroneous and contrary to Fed. R. Civ. P. 8 and also contrary to prior rulings (*Conley, et al., v. Gibson, et al.*, 355 U.S. 41 [1957], also *Scheuer, Administratrix v. Rhodes, Governor of Ohio, et al.*, 416 U.S. 232 [1974], also *Haines v. Kerner, et al.*, 404 U.S. 519 [1972], also *Alfred Samuel Zynn, Jr., Appellant v. Sgt. Charles O'Donnell*, No. 82-1225, United States Court of Appeals for the Third Circuit, 688 F.2d 940 [1982]).

On Appeal, dated October 31, 2002, to the United States Court of Appeals for the Sixth Circuit, said Appeals Court affirmed the District Court's judgment, (see Appendix A). Also an en banc petition was filed in the above court and was denied on April 9, 2003 (see Appendix C).

Statement of the Case Relating to Question No. 2 of the Questions Presented for Review

On February 27, 2002, the above District Court erred by granting the Federal Defendants' motion to substitute Opinion and Order (see Appendix B), said Substitution and Scope Certification was granted without the petitioner having the right to challenge the scope certification and jurisdiction. This ruling is contrary to the case, *Sheila Arbour, Personal Representative of the Estate of Victor Arbour, Plaintiff-Appellant v. Eugene Jenkins, et al., Defendants-Appellees*, No. 89-1747, United States Court of Appeals for the Sixth Circuit, 903 F. 2d 416 (1990), also *Walter B. Blessing and Dorothy L. Blessing, h/w v. United States of America; Walter J. Thomas and Anna M. Thomas, h/w v. United States of America*, Civ. A. Nos. 76-180 and 76-189, United States District Court, E.D. Pennsylvania, 447 F. Supp. 1160 (1978). On October 31, 2002, the petitioners filed an appeal with the United States Court of Appeals for the Sixth Circuit (Appendix A). The said Court of Appeals affirmed the District Court's judgment. Also, an en banc petition was filed on April 9, 2003, this said petition was also denied (Appendix C). The petitioner's complaint cites legal action against Farm Service Agency and it's local and state office directors and managers and their counsel.

Statement of the Case Relating to Question No. 3 of the Questions Presented for Review

All the violations by the defendants cited in the petitioner's complaint was perpetrated under Title 11 proceedings or related to. Therefore, the District Court has original and exclusive jurisdiction, 28 U.S.C. 1334.

Jurisdiction including State Law and all civil proceedings, *Seven Springs Apartments, Phase II, D.C., GA,* (1983), 34 B.R. 987. Also, *Tidewater Group, Inc., Bkrtcy. N.D., GA* (1986), 63 B.R. 670, *The Americas, Inc., D, Puerto Rico* (1986), 63 B.R. 294. Also *Weinberg, Bkrtcy. D.S.D.* 1993, 153 B.R. 286. In the Opinion and Order (Appendix B), page 3, citing Plaintiffs failed to appeal the decision of the Bankruptcy Court and the Order of the Appeals Court (Appendix A), page 3, citing the Bankruptcy Court's judgment on Fed. R. Bankr. P. 8001-8002 is erroneous, as the petitioner's need not file a Notice of Appeal in a related proceeding, this brings into question the District Court's jurisdiction, see in re *K & L Limited, Debtor, Scott Weng and Universal Hospitality Management, Inc., Defendants-Appellants, v. Albert Farb, Trustee for K & L Limited, Plaintiff-Appellee,* No. 83-1428, United States Court of Appeals, Seventh Circuit, 741 F.2d 1023 (1984). Also, *Marathon Pipeline Company, Petitioner v. Northern Pipeline Construction Co., Respondent,* No. Civil 4-80-589, United States District Court for the District of Minnesota, Fourth Division (1981) 12 B.R. 946, also *Marathon Pipeline Company, Petitioner v. Northern Pipeline Construction Co., Respondent,* No. 4-80-589, United States District Court for the District of Minnesota. Also, *Northern Pipeline Construction Co. v. Marathon Pipeline Co., et al.,* 458 U.S. 50 (1982). The above case laws substantiate the erroneous rulings by the District Court and the Appeals Court.

Statement of the Case Relating to Question No. 4 of the Questions Presented for Review

In the District Court's Opinion and Order and Judgment, dated February 27, 2002 (Appendix B), page B-7, Conclusion No. 4, Plaintiffs' surreply is addressed

by the Court as moot. Contrary to this ruling, this surreply contains significant evidence implicating the Federal defendants including the U.S. Attorneys. This surreply contains evidence in the form of fraud, conspiracy, falsification of documents, deceit, misappropriation of Federal money, civil rights wrongful prosecution, etc. In Appendix B, page B-6, section VI, Motion to Strike, Magistrate Judge E. Robert Goebel's Order was dated January 10, 2002. The said surreply was filed on January 8, 2002, initiating the appeal in the U.S. Court of Appeals for the Sixth Circuit, the Proceedings of Events from the District Court listed the surreply as being tendered on December 26, 2001, Proceedings Events entry No. 23. When the District Court Clerk was asked by Massey about the discrepancy in the filing dates, the Clerk stated she was told to list the surreply on December 26, 2001 rather than the actual filing date of January 8, 2002. She also stated the surreply was in her desk. This intentional error by the District Court was addressed in the Appeals Court filing on April 16, 2002, Case No. 02-5358 and the en banc filing dated December 12, 2002. A motion was filed to the District Court to release said surreply to the Appeals Court, the Appeals Court Clerk also stated Massey should file a copy of said motion with his en banc filing and mark it as an Attachment in case I had to go to the Supreme Court.

Reasons for Granting the Petition

The lower courts were erroneous in their Opinion and Orders and Judgments. These rulings are in conflict with Appellate Court's rulings and also the United States Supreme Court decisions. This petition contains the citings of conflicting decisions on these matters. It is very important,

not only to the Petitioner, but also to the public, since we are all affected by the laws and the court's decisions in our country. As we all have different opinions, however, this country has a unique system, with case law complementing our laws. Trust in the lower courts by the populace is at a low ebb, due to politics (the Masseys have had a full taste in this case), money, and infidelity on the part of lawyers and courts. It is evident that some of these lower court's decisions are reciprocating (the good old boys' game). This is very damaging to justice. *See Walter B. Blessing and Dorothy L. Blessing, h/w v. United States of America; Walter J. Thomas and Anna M. Thomas, h/w v. United States of America*, Civ. A. Nos. 76-180 and 76-189, United States District Court, E.D. Pennsylvania (1978), 447 Supp. 1160. It is important for this court to scrutinize these lower court decisions as a duty to the citizenry. We cannot allow our culture to fester any further, my intent in this case is to expose the root problem prevalent in the national society and bring about due process for myself and the public.

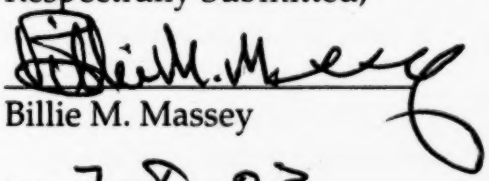
The matter of the violations of a pro se litigant's constitutional rights—that is so relevant in this case—it is the consensus of opinion that more of the public is using computers to search the laws for the purpose of defending their rights in court. This right must be preserved, as a pro se litigant generally doesn't have the means to secure legal representation. Consensus of the general public welcomes the concern of United States Supreme Court Justice O'Connor, in an interview on ABC in the first week of April, 2003 with Diane Sawyer. (Quote, in essence, I am concerned that people are being priced out of representation by lawyers. Justice O'Connor stated that lawyering is a profession, but is being treated like a business—unquote.) Justice O'Connor, you are right on track. The petitioner has experienced his neighbors having

been stripped of their farm property by the Bankruptcy Court and the District Court named in this case, my neighbors were represented by some of my defendants who are lawyers, and some of my former defense lawyers. Petitioner Massey is very thankful that he has some knowledge of law, or he would not have had this opportunity to file this petition with this honorable court. The petitioner respectfully prays that a Writ of Certiorari be granted upon citings in this case, whereby the petitioner can seek justice in the District Court.

Conclusion

The petitioner has filed this petition with pertinent facts relating to the issues in this case and hereby requests that a Writ of Certiorari should be granted.

Respectfully Submitted,



Billie M. Massey

Date: 7-8-03

No. 02-5358

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BILLIE M. MASSEY; GEORGIE C. MASSEY,	)	
Plaintiffs-Appellants,	)	
v.	)	ORDER
BANK OF EDMONSON COUNTY, and Directors; DION W. HOUCHINS; GARY S. LOGSDON; NATTY BUMMPO; MONICA WHEATLEY, U.S. Attorney; MICHAEL F. SPALDING, Assistant U.S. Attorney; SUE AUSTIN; JEFFERY HALL; JACKY OTT; DONALD DUNN; ANTHONY HOLLINSWORTH; CHARLES E. ENGLISH; KEITH CARDWELL; MARTHA MCCRADY; BILLY HUDSON; TIM AULBACH; K. HAROLD GOFF, II; UNITED STATES OF AMERICA,	)	
Defendants-Appellees	)	

Before: SILER and DAUGHTERY, Circuit Judges;
ALDRICH, District Judge*

*The Honorable Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation.

Billie M. Massey and Georgie C. Massey appeal pro se from the district court's dismissal of an action, in which they attempted to appeal a bankruptcy decision and sought relief under numerous federal statutes as well as Kentucky state law. Their appeal has been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon review, the panel unanimously agrees that oral argument is not needed in this case. Fed. R. App. P. 34(a).

The Masseys primarily alleged that their rights had been violated during various debt-collection, bankruptcy, and foreclosure proceedings regarding the sale of their farm. They sued seven "federal defendants," including employees of the Farm Services Agency ("FSA") and the United States Attorney's office. They also sued ten "non-federal defendants," including a local bank and its vice president, four private attorneys, a master commissioner, and three private parties who were involved in the disputed proceedings. The district court granted a motion to substitute the United States for the federal defendants and dismissed the case on February 27, 2002. It is from this judgment that the Masseys now appeal. A *de novo* review of the record shows that dismissal was appropriate because they did not allege a cognizable claim. *See* Fed. R. Civ. P. 12(b)(6).

The district court construed the complaint as seeking an appeal in the Masseys' bankruptcy case. However, the court properly found that this type of relief was not available, as they had not filed a timely and appropriate notice of appeal from the bankruptcy court's decision or paid the filing fee that is requierd for such an appeal. *See* Fed. R. Bankr. P. 8001-8002.

The Masseys inititally raised a claim under the Financial Privacy Act of 1978, 12 U.S.C. § 3403, but later admitted that they did not have such a claim. Thus, the district court properly dismissed their § 3403 claim. *See United States v. Mick*, 263 F.3d 553, 567 (6th Cir. 2001).

The Masseys reasserted this claim under the Privacy Act, 5 U.S.C. § 552a. The district court properly rejected this claim because it could only be brought against an agency and not against any of the individual defendants who had been sued. *See Windsor v. The Tennessean*, 719 F.2d 155, 160 (6th Cir. 1983). The Masseys now argue that they have a Privacy Act claim against the FSA. This argument is unavailing because the court also properly held that any Privacy Act claim would be barred by the applicable two-year statute of limitations and the Masseys have not presented any persuasive grounds for tolling the limitations period. *See* 5 U.S.C. § 552a(g)(5).

The district court considered several of the Masseys' claims under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671-2680, as the United States had been substituted for the individual federal defendants. The court properly dismissed these claims because the Masseys did not show that they had exhausted all of their administrative remedies. *See* 28 U.S.C. § 2675(a); *Singleton v. United States*, 277 F.3d 864, 872-73 (6th Cir. 2002). The Masseys now argue that the United States should not have been substituted for the individual defendants. However, substitution was appropriate because the Masseys did not effectively rebut a certification by the United States Attorney, which indicated that their claims involved activities that were

within the scope of the defendants' federal employment. *See Singleton*, 277 F.3d at 870-71.

The Masseys argue that they satisfied the exhaustion requirement by objecting to the United States' motion for substitution. This argument fails because they did not show that they had filed a claim with the administrative agency as required by § 2675(a). *See id.* at 872-73. Moreover, they do not dispute the district court's finding that their claims fell within the ambit of 28 U.S.C. § 2680(h), which provides that the FTCA does not apply to claims of "malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights."

The Masseys initially alleged that the defendants had violated several criminal statutes, including 18 U.S.C. §§ 152, 1001 and 3571. However, the district court properly found that these statutes do not provide for a private cause of action. *See Thompson v. Thompson*, 484 U.S. 174, 179-80 (1988). The Masseys now assert that they did not intend to bring a private cause of action under the cited statutes. Thus, they have abandoned any civil claims that they may have intended based on the alleged criminal violations. *See Mick*, 263 F.3d at 567.

The Masseys also alleged that the defendants willfully violated an automatic stay in their bankruptcy proceedings. The district court properly held that it did not have jurisdiction to review this claim. *See Eastern Equipment and Servs. Corp. v. Factory Point Nat'l Bank*, 236 F.3d 117, 121 (2d Cir. 2001). The Masseys apparently argue that the claim was meant to be an appeal of the bankruptcy court's judgment. However, they did not satisfy the

requirements for filing such an appeal. *See* Fed. R. Bankr. P. 8001-8002.

Finally, the Masseys raised several civil rights claims under 42 U.S.C. §§ 1983 and 2000h-1. The district court properly dismissed these claims because they were lacking in merit and because the relevant defendants were not state actors who might be liable under § 1983. It also declined to exercise supplemental jurisdiction over any of the claims that the Masseys had raised under state law. The Masseys' initial brief does not raise a clear challenge to these rulings. Thus, they have abandoned these claims for purposes of appellate review. *See Mick*, 263 F.3d at 567.

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

CIVIL ACTION NO. 1:01CV-148-M

BILLIE M. MASSEY &
GEORGIE C. MASSEY, **PLAINTIFFS**

VS.

BANK OF EDMONSON COUNTY
AND DIRECTORS, et al. **DEFENDANTS**

MEMORANDUM OPINION AND ORDER

This matter is before the Court upon the motion by the Seven Federal Defendants to substitute the United States as a party on the tort claims [DN 7]; on a motion by the Seven Federal Defendants to dismiss the case pursuant to Fed. R. Civ. P. 12(b)(6) [DN 8]; on a motion by Defendants, Bank of Edmonson, Dion Houchins, Gary Logsdon, Natty Bummpo, Charles English, Keith Cardwell, Martha McCrady, Billy Hudson, Tim Aulbach, and K. Harold Goff II, to dismiss the case pursuant to Fed. R. Civ. P. 12(b)(6) [DN 9]; and on a motion by the Seven Federal Defendants to strike Plaintiffs' surreply to the Defendants' motion to dismiss [DN 27]. Fully briefed, these matters are ripe for decision.

I. Standard of Review

Upon a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), the Court must

construe the complaint in a light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of its claim that would entitle it to relief. Sistrunk v. City of Strongsville, 99 F.3d 194, 197 (6th Cir. 1996), cert. denied, 520 U.S. 1251 (1997). A judge may not grant a Fed. R. Civ. P. 12(b)(6) motion based on a disbelief of a complaint's factual allegations, Wright v. MetroHealth Medical Center, 58 F.3d 1130, 1138 (6th Cir. 1995), cert. denied, 516 U.S. 1158 (1996). A Fed. R. Civ. P. 12(b)(6) motion tests whether the plaintiff has stated a claim for which the law provides relief. Gazette v. City of Pontiac, 41 F.3d 1061, 1064 (6th Cir. 1994).

The standard of review requires that a plaintiff plead more than bare legal conclusions. Lillard v. Shelby County Bd. of Educ., 76 F.3d 716, 726 (6th Cir. 1996). The complaint must give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. Gazette, 41 F.3d at 1064. "In practice, a...complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." Lillard, 76 F.3d at 726 (citation omitted). In deciding a motion to dismiss, the Court may consider all papers and exhibits appended to the complaint, as well as any matters of which judicial notice may be taken. Hirsch v. Arthur Anderson & Co., 72 F.3d 1085, 1092 (2d Cir. 1995). It is against this standard that the Court reviews the following allegations.

II. Facts

Plaintiffs, Billie M. Massey and Georgie C. Massey, seek one hundred twenty million dollars and compensatory and punitive damages against these

seventeen named Defendants. Plaintiffs' claims arise out of the prosecution of a number of legal causes of action against them stemming primarily from attempts by some of the Defendants to collect unpaid debts, the Masseys' bankruptcy petitions, and the subsequent foreclosure action against the Masseys' farm in Edmonson County and Warren County. Specifically, Plaintiffs allege violations of the Privacy Act of 1978 (12 U.S.C. § 3403); of the automatic stay provisions of the bankruptcy code (11 U.S.C. § 362); fraud; conspiracy; theft; and criminal intent. Additionally, Plaintiffs seek an appeal of Bankruptcy Action No. 99-10942. The Defendants have filed motions to dismiss the Plaintiffs' complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

III. Appeal of Bankruptcy Action

Plaintiffs state in their complaint that they "move this Court for relief on Appeal of Case No. 99-10942(3) 12." This present action is not a bankruptcy appeal nor is it the proper vehicle for an appeal of a bankruptcy action. The Plaintiffs failed to appeal the decision of the bankruptcy court in Case No. 99-10942, and as a result, all claims related to the bankruptcy appeal are dismissed.

IV. Seven Federal Defendants' Motion to Dismiss

Privacy Act

In their complaint, Plaintiffs allege violations of the Financial Privacy Act of 1978, 12 U.S.C. § 3403. However, in response to Defendants' motions to dismiss, Plaintiffs concede that they do not have a claim under the Financial Privacy Act, but instead, Plaintiffs state that their claim

arises under the Privacy Act, 5 U.S.C. § 552a. Therefore, Plaintiffs' claims for violation of the Financial Privacy Act of 1978 against the Seven Federal Defendants are dismissed.

Similarly, the Court concludes that the Plaintiffs' claims against these defendants for violation of the Privacy Act under 5 U.S.C. § 552a fails to state a claim for which relief may be granted. First, Plaintiffs' claims for relief brought against the individual defendants under the Privacy Act fail as a matter of law because an action under the Privacy Act may only be brought against an agency, not individual defendants. Carter v. Channel 27 News, 142 F.3d 432, 1998 WL 68997, *2 (6th Cir. February 11, 1998) (citing Windsor v. The Tennessean, 719 F.2d 155, 160 (6th Cir. 1983), cert. denied, 469 U.S. 826 (1994)); 5 U.S.C. § 552. Plaintiffs have not filed suit against the Farm Service Agency, instead Plaintiffs have chosen to sue the Agency's employees individually.

Second, the Court finds that the Privacy Act claims are barred by the statute of limitations. Pursuant to 5 U.S.C. § 552a(g), an action under the Privacy Act must be brought within two years from the date in which the cause of action arises. The acts about which the Plaintiffs complain were undertaken on June 8, 1998 when two appraisal reports were filed as exhibits to a "Response and Objection to Motion to Avoid Lien" in the Bankruptcy Action No. 98-10201. The Masseys' attorney was served with a copy of this document and attachments and handwriting on Exhibit 7 of the Plaintiffs' complaint suggests the Masseys were in fact even provided with a copy of the document and attachment. This present action was initiated by filing of a complaint on August 28, 2001--over three years after the appraisals in question were filed in that bankruptcy action. The Plaintiffs knew or should

have known of the release of these appraisals in June of 1998. Bergman v. United States, 751 F.2d 314, 316 (10th Cir. 1984), cert. denied, 474 U.S. 945 (1985). Therefore, under 5 U.S.C. § 522(g), the action is untimely. For these reasons, the Plaintiffs' Privacy Act claims are dismissed.

Tort Claims/Motion for Substitution

The United States filed a notice of substitution as the party defendant for the Seven Federal Defendants on all tort claims pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2679(d). The Attorney Generals' certification provides *prima facie* evidence that the employee was acting within the scope of employment. Singleton v. United States, 277 F.3d 864 (6th Cir. 2002). "[T]o contest the propriety of substitution, the plaintiff must produce evidence that demonstrates that the employee was not acting in the scope of employment." Id. at 871. Plaintiffs have not alleged any facts in their complaint or in any subsequent filing that if true would demonstrate that the Seven Federal Defendants were acting outside the scope of their employment. Furthermore, the allegations set forth in the complaint actually establish that the employees were in fact acting within the scope of their employment. Id.; RMI Titanium Co. v. Westinghouse Electric Corp., 78 F.3d 1125, 1143 (6th Cir. 1996). Therefore, the United States' motion for substitution on the tort claims is granted.

By virtue of the United States' substitution as the proper party Defendant for the Seven Federal Defendants, Plaintiffs' tort claims including claims for fraud, theft, and malicious prosecution must be deemed to have been brought under the Federal Tort Claims Act ("FTCA"). 28 U.S.C. § 2671, *et seq.* Before suit can be filed under the

FTCA, a plaintiff must initially exhaust administrative remedies. Singleton, 277 F.3d at 1143; Zolman v. United States, 170 F. Supp. 2d 746, 749 (W.D. Mich. 2001). Because Plaintiffs have failed to demonstrate any compliance with this prerequisite, Plaintiffs' claims under the Federal Tort Claims Act are jurisdictionally barred. Id. Furthermore, Plaintiffs allegations of fraud are also barred by the deceit and misrepresentation exception under the FTCA. 28 U.S.C. § 2680(h); Green v. United States, 8 F. Supp. 2d 983 (W.D. Mich. 1998).

For these reasons, the motion to dismiss by the Seven Federal Defendants is granted.

V. Remaining Defendants' Motion to Dismiss

Privacy Act Claims

In their complaint, Plaintiffs allege violations of the Financial Privacy Act of 1978, 12 U.S.C. § 3403, against these Defendants as well. However, in response to Defendants' motions to dismiss, Plaintiffs concede that they do not have a claim under the Financial Privacy Act, but instead state their claim arises under the Privacy Act, 5 U.S.C. § 552a. Therefore, Plaintiffs' claims for violation of the Financial Privacy Act of 1978 against these Defendants are dismissed.

Similarly, the Court concludes that the Plaintiffs' claims for violation of the Privacy Act under 5 U.S.C. § 552a fails to state a claim for which relief may be granted. As discussed above, Plaintiffs' claims for relief brought against the individual defendants under the Privacy Act fail as a matter of law because an action under the Privacy Act may be brought only against an agency, not individual

defendants. Carter v. Channel 27 News, 142 F.3d 432, 1998 WL 68997, *2 (6th Cir. February 11, 1998) (citing Windsor v. The Tennessean, 719 F.2d 155, 160 (6th Cir. 1983) cert. denied, 469 U.S. 826 (1984); 5 U.S.C. § 552. Therefore, Privacy Act claims under 5 U.S.C. § 552a are dismissed.

Federal Criminal Statutes Claims

Plaintiffs have not stated a claim with regard to their allegations that the Defendants violated certain federal criminal statutes, including 18 U.S.C. § 1001, 18 U.S.C. § 152, and 18 U.S.C. § 3571, because the Plaintiffs have failed to establish that these statutes provide a private cause of action. "[U]nless there is clear congressional intent to provide a civil remedy, a plaintiff cannot recover civil damages for an alleged violation of a criminal statute." Johnson v. Cullen, 925 F. Supp. 244, 251 (D. Del. 1996). See also Federal Savings and Loan Insurance Corp. v. Reeves, 816 F.2d 130, 137-138 (4th Cir. 1987); Williams v. McCausland, 791 F. Supp. 992, 1001 (S.D.N.Y. 1992) (no private right of action is provided under 18 U.S.C. § 1001). The Court has been unable to locate any authority which would imply a civil cause of action for a violation of these federal statutes. Therefore, these claims are dismissed.

Violation of the Automatic Stay Provision

Plaintiffs assert a federal claim under 11 U.S.C. § 362(h) for the alleged willful violations of the automatic stay issued in the bankruptcy action. This claim must be dismissed as well. First, a claim for violation of an automatic stay "must be brought in the bankruptcy court, rather than in the district court, which only has appellate

jurisdiction over bankruptcy cases." Eastern Equipment and Services Corp v. Factory Point National Bank, Bennington, 236 F.3d 117 (2d Cir. 2001). See also MSR Exploration, Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 916 (9th Cir. 1996) and Pereira v. First North American National Bank, 223 B.R. 28, 31 (N.D. Ga. 1998).

Second, from a review of the facts alleged in the complaint, the Plaintiffs cannot as a matter of law state any claim under 11 U.S.C. § 362 based upon the judicial sale of their property on March 25, 2000 or any prior action related to the foreclosure. According to the complaint, the foreclosure action was initially stayed by the bankruptcy court. However, on October 25, 1999, the bankruptcy court terminated the automatic stay and on December 23, 1999, the bankruptcy court overruled Plaintiffs' motion to reconsider. The judicial sale and subsequent transfer of the property were undertaken only after the bankruptcy court had twice affirmed the rights of the parties to go forward with the foreclosure action.

Finally, from a review of the complaint, it appears that the Plaintiffs primarily argue that the foreclosure action was in violation of 11 U.S.C. § 362(h) because the stay should not have been terminated in the first place. If the Plaintiffs felt aggrieved by the bankruptcy courts ruling, they should have appealed that decision, rather than filing this instant action.

VI. Motion to Strike

The motion by the Seven Federal Defendants to strike Plaintiffs' surreply to the Defendants' motion to dismiss [DN 27] is **denied as moot**. Magistrate Judge E. Robert Goebel by order dated January 10, 2002 denied Plaintiffs' motion for an extension of time to file the

surreply and informed the parties that all pending motions stand submitted. Therefore, the surreply was not filed in the record and therefore, need not be stricken from the record.

VII. Conclusion

For the reasons set forth above, **IT IS HEREBY ORDERED** as follows:

1. The motion by the Seven Federal Defendants to substitute the United States as a party on the tort claims [DN 7] is **granted**.

2. The motion by the Seven Federal Defendants to dismiss the case pursuant to Fed. R. Civ. P. 12(b)(6) [DN 8] is **granted**.

3. The motion by Defendants, Bank of Edmonson, Dion Houchins, Gary Logsdon, Natty Bummpo, Charles English, Keith Cardwell, Martha McCrady, Billy Hudson, Tim Aulbach, and K. Harold Goff II, to dismiss the case pursuant to Fed. R. Civ. P. 12(b)(6) [DN 9] is **granted**.

4. The motion by the Seven Federal Defendants to strike Plaintiffs' surreply to the Defendants' motion to dismiss [DN 27] is **denied as moot**.

This the 27th day of February, 2002.

/s/ Joseph H. McKinley, Jr.
Joseph H. McKinley, Jr.
Judge, United States District Court

cc: counsel of record

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

CIVIL ACTION NO. 1:01CV-148-M

BILLIE M. MASSEY &
GEORGIE C. MASSEY **PLAINTIFFS**

V. **JUDGMENT**

BANK OF EDMONSON COUNTY
AND DIRECTORS, et al. **DEFENDANTS**

****

This matter having come before the Court on dispositive motions filed by Defendants, and the Court on this date having issued an Memorandum Opinion and Order granting said motions,

IT IS HEREBY ORDERED that judgment be entered in favor of the Defendants consistent with the Court's Memorandum Opinion and Order. Plaintiffs' state law claims with respect to Bank of Edmonson, Dion Houchins, Gary Logsdon, Natty Bummpo, Charles English, Keith Cardwell, Martha McCrady, Billy Hudson, Tim Aulbach, and K. Harold Goff II are dismissed without prejudice. The remaining claims in Plaintiffs' Complaint are dismissed with prejudice.

THIS IS A FINAL AND APPEALABLE ORDER AND THERE IS NO JUST CAUSE FOR DELAY.

This the 27th day of February, 2002.

JEFFREY A. APPERSON, CLERK

BY: /s/ Erica A. Skinner
Deputy Clerk

Copies to all counsel

No. 02-5358

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BILLIE M. MASSEY; ET AL.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	ORDER
	)	
BANK OF EDMONSON COUNTY, AND DIRECTORS, ET AL.,	)	
	)	
	)	
Defendants-Appellees	)	
	)	

BEFORE: SILER and BATCHELDER, Circuit Judges; and ALDRICH,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the

*Hon. Ann Aldrich, Senior United States District Judge for the Northern District of Ohio, sitting by designation.

petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk